

Brian J. Mankin, Esq. [CSB No. 216228]  
[brian@lmlfirm.com](mailto:brian@lmlfirm.com)  
Misty M. Lauby, Esq. [CSB No. 243009]  
[misty@lmlfirm.com](mailto:misty@lmlfirm.com)  
LAUBY, MANKIN & LAUBY LLP  
4590 Allstate Drive  
Riverside, CA 92501  
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff Gina Robertson and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

GINA ROBERTSON, individually, on behalf  
of all similarly situated current and former  
employees, and on behalf of the State of  
California and all Aggrieved Employees;

Plaintiff,

vs.

ALL CARE HOME HEALTH PROVIDER, a  
California Corporation; ALL CARE HOME  
HEALTH OF SAN GABRIEL, a California  
Corporation; ALL CARE HOSPICE, a  
California Corporation; ALL CARE  
PROVIDER SERVICES, INC., a California  
Corporation; COMCARE HOME HEALTH,  
INC., a California Corporation; ANDREW J.  
PAGSISIHAN, an individual; LILIA  
PAGSISIHAN, an individual; APOLONIO  
PAGSISIHAN, an individual; and DOES 1  
through 10, inclusive;

Defendants.

Case No.: 20STCV18318  
[Assigned to the Hon. Judge Daniel J.  
Buckley, Dept. 1]

**PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT;  
DECLARATIONS IN SUPPORT  
THEREOF; [PROPOSED] ORDER**

Hearing

Date: August 30, 2021

Time: 10:30 a.m.

Dept.: 1

Complaint filed: May 14, 2020

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 30, 2021, at 10:30 a.m., or as soon thereafter as  
3 the matter may be heard by the Honorable Daniel J. Buckley in Department 1 of the Los Angeles  
4 Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Gina  
5 Robertson, individually and on behalf of all others similarly situated, will and hereby does move  
6 the Court for entry of an Order:

- 7 1. Preliminarily approving the Parties' settlement as fair, adequate, and reasonable,  
8 based upon the terms set forth in the Class Action Settlement Agreement (attached as  
9 Exhibit B to the Declaration of Brian Mankin);
- 10 2. Appointing CPT Group as the third-party Settlement Administrator for mailing  
11 notices;
- 12 3. Appointing Plaintiff Gina Robertson as class representative and Brian Mankin and  
13 Misty Lauby as class counsel for settlement purposes only;
- 14 4. Provisionally certifying the proposed Settlement Class pursuant to Section 382 of the  
15 California Civil Code of Civil Procedure, for settlement purposes only, which  
16 includes the following:
  - 17 a. All current and former non-exempt employees of defendants All Care Home  
18 Health Provider, All Care Home Health of San Gabriel, All Care Hospice, All  
19 Care Provider Services, Inc., and/or ComCare Home Health, Inc.,  
20 (collectively, "All Care") who worked in the State of California and  
21 performed nursing duties at any time between May 14, 2016 and May 24,  
22 2021.
- 23 5. Approving the Notice of Settlement of Class Action (attached as Exhibit C to the  
24 Mankin Declaration) and ordering that it be disseminated to the proposed Settlement  
25 Class as provided in the Settlement Agreement;
- 26 6. Setting a hearing date to consider whether the settlement should be finally approved  
27 and to award an amount for the Service Payment to the Class Representative and the  
28 Attorneys' Fees and Costs Award to Class Counsel.

1 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the  
2 Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class  
3 Action Settlement; (3) the Declarations of Plaintiff's counsel (Brian Mankin and Misty Lauby);  
4 (4) the Class Action Settlement Agreement; (5) the Notice of Settlement of Class Action; (6) the  
5 [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (7) the records,  
6 pleadings, and papers filed in this action; and (8) upon such other documentary and oral evidence  
7 or argument as may be presented to the Court at or prior to the hearing of this Motion. As this  
8 Motion is unopposed and because of the multiplicity of issues addressed, Plaintiff respectfully  
9 requests relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d),  
10 and Defendants do not oppose Plaintiff's request for additional pages.  
11

12 Dated: July 27, 2021

LAUBY, MANKIN & LAUBY LLP

13  
14 BY:

  
\_\_\_\_\_  
Brian J. Mankin, Esq.  
Attorneys for Plaintiff and the Proposed  
Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Gina Robertson seeks preliminary approval of a \$1,400,000 wage-and-hour class  
4 action settlement (the "Settlement Amount") on behalf of approximately 950 putative class  
5 members, which includes all current and former non-exempt employees of defendants All Care  
6 Home Health Provider, All Care Home Health of San Gabriel, All Care Hospice, All Care  
7 Provider Services, Inc., and/or ComCare Home Health, Inc.,<sup>1</sup> (collectively, "Defendants" or "All  
8 Care") who worked in the State of California and performed nursing duties (the "Class  
9 Members") at any time between May 14, 2016 and May 24, 2021 (the "Class Period"). The  
10 payment to each Class Member under the Settlement Agreement is based on the number of Work  
11 Weeks that each Class Member was employed by Defendants in a Covered Position during the  
12 Class Period. The Class Action Settlement Agreement is attached as Exhibit "B" to the  
13 Declaration of Brian J. Mankin ("Mankin Decl."), and is hereinafter referred to as the  
14 "Settlement Agreement" or "S.A." The proposed Notice of Settlement of Class Action ("Class  
15 Notice") is attached to the Mankin Declaration as Exhibit "B."

16 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff  
17 Counsel's application for a reasonable award of attorney's fees not to exceed the total amount of  
18 \$466,666.66 which is 1/3 of the Maximum Settlement Amount (hereinafter, the "Settlement  
19 Amount"), Plaintiff Counsel's litigation expenses not to exceed \$15,000, Settlement  
20 Administrator Costs of \$15,000, PAGA penalties of \$50,000 (of which \$37,500 or 75% will be  
21 paid to the LWDA and the remaining \$12,500 or 25% will be paid to the Class Members), and a  
22 Service Payment of \$10,000 to Plaintiff Gina Robertson ("Class Representative"). (S.A. ¶ 42(a-  
23 h)).

24 After all Court-approved deductions from the Settlement Amount, it is estimated that  
25 \$855,833.34 will be available to pay the approximately 950 Class Members, as follows:

26 ///

27  
28  

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<sup>1</sup> "Defendants" and "All Care" shall also include to individual defendants Andrew J. Pagsisihan, Lilia Pagsisihan, and Apolonio Pagsisihan, who are also defined as "Released Parties" in the Settlement Agreement.

|                                           | <b>Total Amount</b> |
|-------------------------------------------|---------------------|
| <i>Settlement Amount</i>                  | \$1,400,000         |
| Attorneys' Fees (1/3)                     | \$466,666.66        |
| Litigation Costs                          | \$15,000            |
| Administrator Costs                       | \$15,000            |
| PAGA payment to LWDA (75% of \$50k award) | \$37,500            |
| Class Representative's Service Award      | \$10,000            |
| <b><i>Net Settlement Amount</i></b>       | <b>\$855,833.34</b> |

The settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of credited Weeks Worked, and the opportunity to opt-out or object to the settlement. All Class Members who do not affirmatively opt-out will receive a settlement check after the Court grants final approval. Payments to the Class Members will be on a pro-rata basis based on the number of Weeks Worked during the Class Period.

The proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement Agreement.

## **II. BACKGROUND**

### **A. THE SETTLEMENT CLASS**

The Class is defined as follows:

All current and former non-exempt employees of defendants All Care Home Health Provider, All Care Home Health of San Gabriel, All Care Hospice, All Care Provider Services, Inc., and/or ComCare Home Health, Inc., (collectively, "All Care") who worked in the State of California and performed nursing duties at any time between May 14, 2016 and May 24, 2021. (S.A. ¶ 31).

### **B. PROCEDURAL HISTORY**

On April 7, 2020, Plaintiff submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and simultaneously sent a letter to Defendants requesting the production

1 of her personnel and timekeeping records in order to further evaluate her wage and hour claims.  
2 While the LWDA exhaustion period was running, Plaintiff filed a putative class action complaint  
3 in the Court. Thereafter, the LWDA declined to assert jurisdiction over the PAGA, thereby  
4 giving Plaintiff the right to bring PAGA claims. (Mankin Decl., ¶ 11).

5 Meanwhile, Plaintiff filed her initial complaint and then after Defendants filed an answer  
6 to the complaint, the Parties entered into a stipulation permitting Plaintiff to file a first amended  
7 complaint that alleged related PAGA claims, which was ultimately filed on October 5, 2020.  
8 The operative first amended complaint alleges class and PAGA claims, including: (1) failure to  
9 pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal  
10 periods, (4) failure to provide rest breaks, (5) failure to reimburse for business expenses, (6)  
11 failure to timely pay final wages upon separation of employment, (7) failure to provide accurate  
12 itemized wage statements, (8) unfair and unlawful competition pursuant to Business and  
13 Professions Code §17200 *et seq.*, and (9) related claims under PAGA. (Mankin Decl., ¶ 12).

14 Defendants vehemently disputed the claims at issue, including noting in the Initial Status  
15 Conference Statement that “Plaintiff’s claims are without merit and that Defendants did not  
16 engage in unlawful conduct towards Plaintiff and/or the putative class members.” However,  
17 prior to taking depositions, conducting discovery, and filing a disputed motion for class  
18 certification, the parties agreed to explore a resolution through mediation. In preparation for the  
19 mediation, the Parties informally exchanged documents and information that allowed both sides  
20 to calculate the potential damages and evaluate potential risk, including extensive policies and  
21 procedures pertaining to each claim alleged, and statistics relating to the number of current and  
22 former employees, number of shifts, pay periods and other things. In this regard, Defendants  
23 provided over 8,000 pages of documents, including a comprehensive sampling of timekeeping  
24 and payroll records of the Class Members. This robust sampling enabled both parties and their  
25 experts to take a deep dive into the claims. Additionally, during this process, Plaintiff and her  
26 counsel analyzed, researched, and investigated the potential issues, including matters related to  
27 the calculation of damages, trial, and appellate issues and risks. (Mankin Decl., ¶ 13).

28 ///

1 On February 23, 2021, the parties participated in a full-day mediation with Mark Rudy,  
2 who is one of the most experienced and reputable class action mediators in California.  
3 Ultimately, Mr. Rudy issued a mediator's proposal calling for a class-wide settlement for  
4 \$1,400,000. The Parties accepted the mediator's proposal and memorialized the terms of the  
5 settlement in a long-form Settlement Agreement. (Mankin Decl., ¶ 14, and Exhibit "B"). The  
6 Parties now seek the Court's preliminary approval of the Settlement.

7 **C. SUMMARY OF THE CLAIMS AND DEFENSES**

8 Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt  
9 employees who performed nursing duties. However, Defendants vigorously contested and  
10 denied each of Plaintiff's material allegations on the merits and as to the propriety of a class  
11 action or PAGA representative action on behalf of the putative class and allegedly aggrieved  
12 employees, as discussed herein. (Mankin Decl., ¶ 15).

13 First, Plaintiff contends that Defendants violated minimum wage and overtime laws in  
14 several ways. Defendants employed in-home nurses as either "shift care" nurses who were  
15 assigned to one patient on a long-term basis, or "intermittent care" nurses who could see  
16 different patients daily. Plaintiff contends Defendants failed to pay the nurses proper minimum  
17 and overtime wages where they (1) failed to pay for all hours worked, including for drive time in  
18 between patients, rest and recovery periods, time spent waiting for appointments to begin, and  
19 time spent contacting individuals regarding an appointment; (2) failed to pay for all hours  
20 recorded; (3) deducted 30-minutes of pay for meal periods whether the employee was able to  
21 take their meal period or not; (4) failed to pay for off-the-clock charting that the nurses had to  
22 perform because they were too busy with patients during the workday; and (5) paid overtime  
23 hours at the regular hourly rate rather than at one and one-half times the regular rate of pay.  
24 Defendants countered that (1) they relied on self-reported time in compensating nurses who  
25 worked out in the field, including time reported for meal periods; (2) they were not required to  
26 pay drive time for shift care nurses, (3) they compensated intermittent care nurses for all work  
27 contractually determined by the nurse and All Care, inclusive of travel time and all other  
28 activities encompassed by the visit , and (4) the percentage of both shift care and intermittent

1 care nurses who worked any overtime was very low. (Mankin Decl., ¶ 16).

2 Second, Plaintiff alleged that she and the Class Members were often unable to take their  
3 meal periods due to patient care duties. Despite this, Plaintiff and the Class Members allege they  
4 were required to record meal periods and Defendants automatically deducted 30 minutes each  
5 day regardless of whether the employee took a meal period. Moreover, Plaintiff alleged that  
6 Defendants failed to pay any meal premiums. However, Defendants argued that (1) they have  
7 fully compliant meal period policies and practices, (2) they made meal periods available at all  
8 relevant times, and (3) missed, short or late breaks were solely the decision of the employee.  
9 Further, Defendants argue that the intermittent nurses rarely worked enough hours in a day to  
10 trigger a meal period. (Mankin Decl., ¶ 17).

11 Third, Plaintiff further alleged that, at all relevant times, Plaintiff and the Class Members  
12 were regularly unable to take rest periods because they were either with a client or travelling to a  
13 client at all times throughout the day and did not have adequate time to take breaks. Despite this,  
14 Plaintiff contends rest period premiums were never paid. Again, Defendants argued that their  
15 policies and practices were compliant with California law, Defendants authorized and permitted  
16 rest periods to be taken at all relevant times, and, because the Class Members were on their own  
17 for most of the day, they were free to take breaks whenever they chose. Further, Defendants  
18 argue that the intermittent nurses often worked less than the 3.5 hours necessary to trigger the  
19 rest period obligation. (Mankin Decl., ¶ 18).

20 Fourth, Plaintiff alleged that she and the Class Members were not reimbursed for  
21 necessary business expenses for things such as the use of home computers, home internet, cell  
22 phones, and personal vehicles which they used to carry out their duties for the company.  
23 Defendants countered that they (1) were not required to pay for personal vehicle costs or costs  
24 related to home computers, home internet, and cell phones of shift care nurses; and (2)  
25 compensated intermittent care nurses for all work contractually determined by the nurse and All  
26 Care, inclusive of a fixed amount for expenses. (Mankin Decl., ¶ 19).

27 Fifth, Plaintiff sought waiting time penalties under Labor Code §§ 201 – 203 for each  
28 *former* employee due to the violations discussed above. Defendants opposed this claim on the

merits by arguing that this claim is solely derivative of the claims above, and that Defendants would defeat those claims at the class certification stage or on dispositive motion. (Mankin Decl., ¶ 20).

Sixth, Plaintiff raised claims for wage statement violations due to the failure to accurately state total hours worked for every pay period due to the lunch auto-deduct and failure to account for and pay all hours worked. Additionally, the wage statements were inaccurate because Defendant's failed to pay and list overtime at the appropriate rate on the wage statements. However, Defendants again opposed this claim and argued that, even if there was merit to the wage statement theories (which Defendants denied), statutory § 226(e) penalties are not proper for these type of "derivative" violations. (Mankin Decl., ¶ 21).

Lastly, Defendant argued that there are substantive reasons that would prevent certification of the Class. Defendant claimed that individual issues predominate, as there are too many individual issues involved in each Class Member's claims. For example, Defendant asserted that Class Members were given so much latitude with regards to whether and how they took their meal and rest breaks, that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the Defendant. (Mankin Decl., ¶ 22).

Despite the disputed nature of the claims, the Parties concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in order to limit further risk, expense and protracted litigation.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

The following is a summary of the principal terms of the Settlement Agreement.

#### **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

The \$1,400,000 Settlement Amount is non-reversionary and will be paid out to Participating Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's Attorneys' Fees and Costs Award, as approved by the Court; (2) a Service Award of \$10,000 to Plaintiff, as approved by the Court; (3) Settlement Administration

Costs of \$15,000; (4) a \$50,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i); and (5) the aggregate of all Individual Settlement Payments of the Participating Class Members. (S.A. ¶ 42(a-h)). Defendants will separately pay their share of payroll tax obligations. (S.A. ¶ 42(a)).

After all Court-approved deductions from the Settlement Amount, approximately \$855,833.34 will remain as the Net Settlement Amount. Given that there are approximately 950 Class Members, the average net recovery will be approximately \$900, while the actual payment to each employee will be on a pro rata basis according to the number of Weeks Worked during the Class Period.

This average net recovery is on par with (if not significantly better than) many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal. July 11, 2016) (average net recovery of approximately \$50); *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

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1           **B. NOTICE PROCEDURES**

2           The proposed Class Notice will be provided to the Class Members showing the estimated  
3 amount that each Class Member will receive and the number of Weeks Worked he/she is  
4 credited (Exhibit “C” to the Mankin Decl.). As required by the LA County Preliminary  
5 Approval Checklist, the Notice also advises: 1) how uncashed checks are handled, 2) explains  
6 the Court’s social distancing guidelines, 3) advises how Class Members may learn of continued  
7 hearing dates, and all other required items.

8           Within 15 days after Preliminary Approval is granted, Defendants will provide the  
9 Settlement Administrator with a complete list, compiled in good faith from Defendants’ records,  
10 of the Class Members’ full names, last known addresses, telephone numbers, social security  
11 numbers, hire date, and rehire and end dates of employment if applicable. (S.A. ¶¶ 4, 57). The  
12 Settlement Administrator will then populate the Class Notice for each employee, obtain updated  
13 addresses using the National Change of Address Database maintained by the Postal Service, and  
14 mail each Class Member the Class Notice within 10 days of receipt of the Class Data. (S.A. ¶  
15 58).

16           In the event that any Class Notice is returned as having been undelivered, the Settlement  
17 Administrator shall perform a skip trace search and seek an address correction for such Class  
18 Member(s), and a second Class Notice will be sent to any new or different address obtained.  
19 (S.A. ¶ 59).

20           **C. EXCLUSION AND OBJECTION PROCEDURES**

21           Class Members who do not timely opt out of the Settlement shall be deemed to  
22 participate in the Settlement and shall become a Participating Class Member without having to  
23 submit a claim form or take any other action. In order to opt out of the Settlement, the Class  
24 Member must submit a written request to the Settlement Administrator no later than 45 days  
25 after being mailed Class Notice by the Settlement Administrator (“Notice Response Deadline”).  
26 (S.A. ¶ 18). Any opt-out request that is not postmarked by the Notice Response Deadline will be  
27 invalid. (S.A. ¶ 62(a)). To be valid, the opt-out request must include the full name, address,  
28 telephone number, last four digits of the social security number or date of birth, and signature of

1 the Class Member. *Id.*

2 The Class Notice shall inform the Class Members of their right to object to the  
3 Settlement. Any Class Member who wishes to object to the Settlement must submit a written  
4 objection to the Settlement Administrator no later than the Notice Response Deadline. The  
5 objection must include the case name and number, the Class Member's full name, address,  
6 telephone number, and dates of employment, and must set forth, in clear and concise terms, a  
7 statement of the reasons supporting the objection and any documentation or evidence in support  
8 of the objection. (S.A. ¶ 62(c)).

9 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

10 The Settlement Administrator shall divide the Net Settlement Amount — as defined in  
11 the Settlement Agreement as the Settlement Amount less Attorneys' Fees and Costs Award,  
12 Service Payment to the Class Representative, Settlement Administration Costs, and payment of  
13 PAGA penalties to the LWDA — by the total number of Weeks Worked by the Class Members  
14 during the Class Period, in order to determine the amount to which each Class Member is  
15 entitled for each Week Worked (the "Workweek Value"). The Settlement Administrator will  
16 multiply the Workweek Value by the total number of Weeks Worked for each Class Member to  
17 arrive at the Individual Settlement Payment for that Class Member. (S.A. ¶ 42(c)). The Class  
18 Notice will inform each Class Member of his/her estimated Individual Settlement Payment and  
19 the number of Weeks Worked during the Class Period. Class Members may dispute their Weeks  
20 Worked if they feel they worked more weeks in the Class Period in California than Defendant's  
21 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 60).

22 As noted above, assuming a class size of 950 Class Members, the average payment to  
23 each class member will be approximately \$900 each, although the actual payments will be  
24 calculated on a pro-rata basis.

25 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

26 The Settlement Agreement provides that Defendants shall deposit the Settlement Amount  
27 within 15 days of the Effective Date (S.A. ¶ 63). Defendants shall also separately fund their  
28 share of payroll taxes, as directed by the Settlement Administrator. Within 10 days of receipt,

1 the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶  
2 64).

3 Each Class Member will have 180 days to cash his/her settlement check. If a Class  
4 Member fails to cash the check by the deadline, then the Settlement Administrator shall issue the  
5 unclaimed funds to the State Controller's Office for the State of California in the name of the  
6 Class Member. (S.A. ¶ 65).

7 **F. TAX TREATMENT**

8 The Parties agree that one-third (33.34%) of each Individual Settlement Amount shall  
9 constitute wages (for which each participating Class Member will be issued an IRS Form W-2  
10 for such payment), and the remaining two-thirds shall constitute interest and penalties (allocated  
11 as one-third each for which each participating Class Member will be issued an IRS Form 1099  
12 for the interest and penalty allocation). (S.A. ¶ 42(d)).

13 Defendants will separately pay their share of employer payroll taxes on the sum allocated  
14 to wages, which share will not be deducted from the Settlement Amount. (S.A. ¶ 42(a)).

15 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

16 In exchange for these payments, paragraph 25 of the Settlement Agreement provides that  
17 the Participating Class Members will release certain "Released Parties" (as defined in the  
18 Settlement Agreement) of the claims and causes of action alleged in the operative Complaint<sup>2</sup>, as  
19 follows:

20 Any and all causes of action and factual or legal theories that were alleged in the  
21 Complaint or reasonably could have been alleged based on the facts and legal  
22 theories contained in the Complaint, including all of the following claims for relief:  
23 (i) failure to pay regular and minimum wages; (ii) failure to pay all overtime wages;  
24 (iii) failure to provide meal periods; (iv) failure to provide rest periods; (v) failure  
25 to reimburse business expenses; (vi) failure to timely pay final wages; (vii) failure  
26 to provide accurate itemized wage statements; (viii) unfair and unlawful business  
27 practices that could have been premised on the claims, causes of action or legal  
28 theories of relief described above or any of the claims, causes of action or legal  
theories of relief pleaded in the Complaint; (ix) all claims under the California  
Labor Code Private Attorneys General Act of 2004 ("PAGA") that could have been  
premised on the claims, causes of action or legal theories described above or any

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<sup>2</sup> The Settlement Agreement will not release any claims for workers compensation, unemployment, disability benefits of any nature, nor does it release any claims under state or federal discrimination statutes.

1 of the claims, causes of action or legal theories of relief pleaded in the Complaint;  
2 (x) any other claims or penalties under the wage and hour laws pleaded in the  
3 Complaint; and (xi) all damages, penalties, interest and other amounts recoverable  
4 under said claims, causes of action or legal theories of relief [“Released Claims”].

5 The time governing the release be the same time as the Class Period. (S.A. ¶ 46).

6 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**  
7 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**  
8 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

9 California Rule of Court 3.769(d) provides that the Court may make an order approving  
10 certification of a provisional settlement class at the preliminary approval stage. It is well-  
11 established that trial courts should use a “lesser standard of scrutiny” for determining the  
12 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*  
13 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in  
14 a settlement class, so the case management issues inherent in determining if the class should be  
15 certified need not be confronted; and the trial court’s fairness review of the settlement protects  
16 the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil*  
17 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification  
18 determination and the merits of the case is further attenuated within the context of the settlement  
19 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short  
20 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*  
21 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class  
22 certification, a district court need not inquire whether the case, if tried, would present intractable  
23 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the  
24 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,  
25 as defined above, under Code of Civil Procedure § 3150.

26 **A. NUMEROSITY AND ASCERTAINABILITY**

27 Numerosity is met if a proposed class is so large that joinder of all members would be  
28 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if  
the class members can be objectively identified and given notice of the litigation without

unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here, according to Defendants’ records, there are approximately 950 Class Members. This figure undoubtedly satisfies the numerosity requirement.

**B. WELL-DEFINED COMMUNITY OF INTEREST**

*1. Commonality*

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to common policies and practices relating to Defendants’ payment of wages, the provision of meal and rest breaks, and wage statements, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this settlement only.

*2. Typicality*

Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims and the claims alleged on behalf of the class.” *See Herbert B. Newberg & Alba Conte, Newberg on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding wages, meal and rest breaks, and wage statements, which are at the core of the lawsuit.

*3. Adequacy of Representation*

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. Wellquest Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Specifically, Plaintiff is adequate to represent the class because she was employed by Defendants during the Class Period as both a shift care and intermittent care nurse, experienced the same wage and hour practices as the rest of the Class, understood her duties as Class Representative, has been willing to undergo the risk of litigation, and has no conflict of interest.

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Adequacy also may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience in wage and hour class actions like the instant matter. (Mankin Decl., ¶¶ 2-6).

4. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification for settlement purposes is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

**V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE**

**A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13150. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice*, 688 F.2d at 625.

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1 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and  
2 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"  
3 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177  
4 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only  
5 after determining that it is "fair, adequate and reasonable," considering factors such as the  
6 "risk, expense, [and] complexity" of continued litigation) (citations omitted). The Court enjoys  
7 broad discretion in making its fairness determination, and should consider factors including, but  
8 not limited to:

9 [T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration  
10 of further litigation, the risk of maintaining class action status through trial, the  
11 amount offered in settlement, the extent of discovery completed and the stage of  
12 the proceedings, the experience and views of counsel . . . and the reaction of the  
class members to the proposed settlement.

13 *Dunk, supra* (setting forth a non-exhaustive list of factors for the court's consideration at final  
14 approval).

15 The above factors are not exclusive "and the court is free to engage in a balancing and  
16 weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at  
17 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private  
18 consensual agreement between the parties." *Id.* The inquiry must be limited "to the extent  
19 necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
20 overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal  
21 quotation marks omitted).

22 At the preliminary approval stage, the Court need only determine that the settlement falls  
23 within the "range of possible judicial approval," so that notice to the class and the scheduling of  
24 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant  
25 preliminary approval if there are no "grounds to doubt its fairness or other obvious  
26 deficiencies . . . and [the settlement] appears to fall within the range of possible approval."  
27 *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A  
28 "presumption of fairness exists where: (1) the settlement is reached through arm's-length

1 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
2 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors  
3 is small.” *Dunk, supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well  
4 within the range of approval because there are no grounds to doubt its fairness.

5       **B.     THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**  
6               **NEGOTIATIONS**

7       The settlement was the product of extensive arm’s length negotiations among counsel and  
8 was facilitated by an experienced wage-and-hour class action mediator. Though cordial and  
9 professional, the settlement negotiations were adversarial and non-collusive in nature. The  
10 settlement reached is the product of substantial effort by the parties and their counsel. Although  
11 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they  
12 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable  
13 decisions on class certification, summary judgment, at trial and/or on the damages awarded,  
14 and/or on an appeal that can take several more years to litigate. In addition, if Defendants  
15 prevailed on any of their defenses, the employees may not have received any monetary recovery.

16       **C.     THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT**  
17               **PRELIMINARY APPROVAL OF THE SETTLEMENT**

18       Plaintiff thoroughly investigated and evaluated the factual and legal strengths and  
19 weaknesses of this case before reaching the settlement. As described above, the settlement was  
20 reached after extensive investigation and research, thorough calculations and risk evaluation, and  
21 a substantial exchange of information and discovery relating to the Class Members prior to and  
22 after mediation. (Mankin Decl., ¶¶ 13, 24).

23       **D.     THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

24       To evaluate a settlement, the parties must provide the trial court with “basic information  
25 about the nature and magnitude of the claims in question and the basis for concluding that the  
26 consideration being paid for the release of those claims represents a reasonable compromise.”  
27 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) The *Kullar* requirement  
28 was further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

1 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that  
2 the class could recover was not necessary:

3           Greenwell misunderstands *Kullar*, apparently interpreting it to  
4           require the record in all cases to contain evidence in the form of an  
5           explicit statement of the maximum amount the plaintiff class could  
6           recover if it prevailed on all its claims – a number which appears  
7           nowhere in the record of the case. But *Kullar* does not, as Greenwell  
8           claims, require any such explicit statement of value; it requires a  
9           record which allows “an understanding of the amount that is in  
10          controversy and the realistic range of outcomes of the litigation.

11           A settlement is not judged against what might have been recovered had a plaintiff  
12          prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair  
13          and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250)  
14          (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded  
15          by the proposed settlement is substantially narrower than it would be if the suits were to be  
16          successfully litigated, this is no bar to a class settlement because the public interest may indeed  
17          be served by a voluntary settlement in which each side gives ground in the interest of avoiding  
18          litigation.”)

19           Of particular relevance to the reasonableness of the proposed Settlement is the fact that  
20          significant legal and factual grounds for defending this action exist. First, in addition to  
21          disputing the merits of Plaintiff’s claims, Defendants strongly disputed that Plaintiff could obtain  
22          class certification or that a representative action was manageable, arguing individualized issues  
23          predominate here. Defendants further argued that they complied with the applicable law and that  
24          any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff’s  
25          ability to certify the class or litigate a representative action. While Plaintiff asserts that this is a  
26          suitable case for certification an representative treatment, she realizes that there is always a  
27          significant risk associated with class certification proceedings, which could significantly limit the  
28          claims that she could pursue on a class and/or representative basis.

29           In light of the uncertainties of protracted litigation, this negotiated settlement reflects the  
30          best practicable recovery for the Class Members. While the Settlement Amount is, of course, a

1 compromise figure, the potential risks and opportunities of both parties were effectively weighed  
2 and considered by the parties, resulting in a fair and equitable settlement.

3 Based upon detailed data obtained through informal discovery and information  
4 exchanges, and factoring in claim certification probabilities and liability probabilities, Class  
5 Counsel formulated detailed damages models to value the claims in preparation for mediation  
6 and in order to reach a realistic and reasonable resolution.

7 Based upon detailed data obtained through informal discovery and information  
8 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:  
9 (1) approximately 888 total Class Members, (2) approximately 70,708 workweeks during the  
10 Class Period, (3) approximately 439 Aggrieved Employees, and (4) approximately 26,260  
11 workweeks during the PAGA Period. From these metrics, and when factoring in claim  
12 certification probabilities and liability probabilities, Class Counsel formulated detailed damages  
13 models to value the claims in preparation for mediation and to reach a realistic and reasonable  
14 resolution.

15 Plaintiff contends that her claim for unpaid overtime is based on the allegation that  
16 Defendants failed record and compensate the Class Members for time that was recorded but  
17 either not paid altogether or not paid at the correct overtime rate, time that employees spent  
18 driving between patients, and significant amounts of time where the employees performed work  
19 off-the-clock such as completing patients' charts after they arrived home in the evenings  
20 resulting in a class-wide underpayment of overtime. Based on the sampling data provided by  
21 Defendants, Plaintiff's experience, and Plaintiff's knowledge of Defendant's practices, Plaintiff  
22 estimated that Class Members were subject to one or all of these overtime violations for two  
23 hours per day during 16% of the 353,540 shifts at an average overtime pay rate of \$21.00 per  
24 hour. Assuming Plaintiff's estimates are accurate, this gives the claim an estimated damage value  
25 of \$1,158,197 if Plaintiff overcame all of Defendants' defenses. Plaintiff also alleged that the  
26 underpayment resulted in the failure to pay all wages owed upon separation of employment,  
27 leading to violations of Labor Code §§ 201 – 202 which trigger waiting time penalties under  
28 Labor Code § 203. Based on data showing there were 516 *former* Class Members impacted,

1 Plaintiff calculated the maximum potential waiting time penalties at \$1,950,480. Thus, this  
2 overtime claim has a combined value (including waiting time penalties) of \$3,108,677.  
3 However, Defendants raised a variety of strong defenses including that (1) a vast majority of the  
4 employees were intermittent care nurses who rarely worked overtime, (2) even if there were  
5 work performed off-the-clock or unaccounted for, it was nowhere near two hours per day, and  
6 (3) off-the-clock work is a highly individualized issue that would easily be defeated at the class  
7 certification stage. While Plaintiff believed that this claim was strong and had a likelihood of  
8 success at class certification Plaintiff assigned 30% risk at certification and a 40% risk on the  
9 merits, leading to a risk-adjusted value of \$932,603 for the overtime claim.

10 Plaintiff's claim regarding minimum wages arose out of Defendants' alleged practice of  
11 requiring Class Members to record meal periods even if they were unable to take them, thus  
12 resulting in 30 minutes of unpaid work time on occasions when this occurred. Plaintiff estimates  
13 that this issue occurred in 25% of the 353,540 shifts at an average rate of pay of \$21.00 resulting  
14 in \$1,856,085.00 in class damages for this claim. However, Defendants vehemently denied that  
15 this was a company policy or practice and that records show that the Class Members were able to  
16 take their breaks. Moreover, daily shifts for intermittent care nurses were rarely long enough to  
17 incur a meal period. Further, because of the individualized inquiries required to prove this claim,  
18 Defendant argued that it would not be certified. Recognizing the inherent risks in proving such a  
19 claim, Plaintiff assigned a 75% risk adjustment her minimum wage claims giving it a value of  
20 \$464,021.00.

21 Next, Plaintiff's claims for meal and rest break violations focused on the theory that  
22 employees did not receive adequate breaks, and thus were owed a wage premium for each  
23 violation. Based on an analysis of the sampling of payroll and timekeeping records, Plaintiff  
24 estimates there were a total of 88,358 meal period violations and 88,358 rest break violations.  
25 Thus, the maximum potential damages for the meal and rest break claims totaled \$3,712,170.  
26 However, this violation rate failed to account for various risks and defenses, such as the  
27 argument that, for every allegedly noncompliant break, a fact-finder would have to determine for  
28 each Class Member whether a break was missed and why, and why a break was

noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the Defendants. Based on the facts and corresponding defenses, Plaintiffs assigned a 30% risk at class certification and a 30% risk on the merits. In sum, this placed a total risk-adjusted value of \$1,484,868 on the meal and rest break claims.

Additionally, Plaintiff claimed that Defendants failed to reimburse business expenses due because Class Members had to complete work at home on their home computers and used their cell phones and vehicles for business purposes. Plaintiff assigned an estimated value of \$20 per month for 17,677 months worked by Class Members for a total of \$353,540 in class damages. However, Defendants argued that this claim would also not be certified because individual issues would predominate as to each employee's actual expenses. As a result, Plaintiff assigned a 75% adjustment to this claim for a total risk-adjusted value of \$88,385.

Finally, Plaintiff alleged that Defendants failed to provide accurate wage statements due to the failure to state total hours worked during the pay periods, as well as the derivative violations discussed above. In total, Plaintiff estimates there were 13,130 wage statements at issue, and, with a 100% violation rate, the claim had a maximum value of \$1,291,050 under the \$50/\$100 standard of § 226(e). However, Defendants raised many defenses, including that: (a) these violations, if any, did not result in any "injury" under § 226(e), (b) the violations, if any, were not "knowing and intentional" and could not support the assessment of penalties, and (c) "derivative" wage statement claims are without merit. These defenses all went to the merits, not to defeating class certification. Thus, Plaintiff did not assign a risk at the class certification stage and only applied a 20% risk on the merits. Thus, this resulted in a risk-adjusted value for the wage statement claims of \$1,032,840.

In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff's estimate the risk-adjusted class recovery as follows:

|                                             |                 |
|---------------------------------------------|-----------------|
| E. Overtime and Waiting Time Penalty Claims | \$ 932,603.00   |
| F. Minimum Wage Claims                      | \$ 464,021.00   |
| G. Meal and Rest Break Claims               | \$ 1,484,868.00 |
| H. Business Expense Reimbursement Claims    | \$ 88,385.00    |

I. Wage Statement Penalty Claims: \$ 1,032,840.00

**Plaintiff's Estimate of Total Risk-Adjusted Damages** **\$ 4,002,717.00**

While the PAGA civil penalty would have a maximum value in the seven figures, this figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Moreover, Defendants argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the agreed-upon settlement is fair and reasonable.

**E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION**

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of counsel”) (internal quotation and citation omitted).

Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, including one of the largest PAGA awards in California’s history, collecting over \$200 million for their clients, having prevailed in a class action and representative action case at trial, among other things. (Mankin Decl., ¶¶ 2-6). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (*Id.*, ¶¶ 10-13, 24-27).

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1           **F.       THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

2           The proposed Class Notice should be approved, as it fully informs the Class Members of  
3 the nature of the lawsuit and each Class Member's rights under terms of the Settlement  
4 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as  
5 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified  
6 of the proposed settlement.

7           The proposed Class Notice and proposed plan for the Settlement Administrator to mail  
8 the Class Notice to the last known address of all class members complies with all the  
9 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed  
10 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,  
11 litigation expenses, and the costs of administration; (3) details about the final fairness hearing  
12 and how class members may elect to exclude themselves or make an objection; and (4) how class  
13 members can obtain additional information. *See* Class Notice (Mankin Decl., Exhibit C). In  
14 addition, it will inform Class Members of their estimated settlement share.

15           The Court has wide discretion in approving the means of providing notice, so long as the  
16 class representative "provide(s) meaningful notice in a form that should have a reasonable  
17 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,  
18 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be  
19 disseminated directly to the Class Members by first class mail by the Settlement Administrator,  
20 since Defendants have the last known addresses of all Class Members and the Settlement  
21 Administrator will perform a skip trace and update those addresses for any Class Notices that are  
22 returned and re-send those Notices.

23           The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Class  
24 Members with all due process protections required by the United States Constitution. Moreover,  
25 the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice  
26 includes, without limitation (1) a detailed explanation of the case, including the basic contentions  
27 or denials of the parties; (2) a statement that the court will exclude the member from the class if  
28 the member so requests by a specified date; (3) a procedure for the member to follow in

1 requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not,  
2 will bind all members who do not request exclusion; and (5) a statement that any member who  
3 does not request exclusion may, if the member so desires, enter an appearance through counsel.  
4 The 45-day deadline for Class Members to exclude themselves is reasonable, as it provides Class  
5 Members with sufficient time to do so and, if they so choose, to seek independent legal advice in  
6 the interim. If a Class Member does not opt out, then he or she will automatically be sent a  
7 settlement check. (*Id.*).

8 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**  
9 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

10 The fact that each member who does not opt out of the Settlement shall be mailed a check  
11 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude  
12 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no  
13 settlement funds will revert to Defendants; instead, if any checks are not cashed before the  
14 objection deadline, the funds will be issued to the State Controller’s Office in the name of the  
15 Class Member, subject to approval of the Court. Such terms are favored by Courts and  
16 demonstrate that there was no collusion between counsel for the parties and that the Settlement is  
17 fair and favorable to the Class Members.

18 **H. THE ATTORNEY’S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**  
19 **FAIR**

20 Under the terms of the Settlement Agreement, Class Counsel is requesting \$466,666.66  
21 in attorneys’ fees and costs, which is equal to one-third (1/3) of the Maximum Settlement  
22 Amount, and the costs are capped at \$15,000. *See, e.g. Laffitte v. Robert Half Int’l Inc.* (2016)  
23 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier,  
24 when class action litigation establishes a monetary fund for the benefit of the class members,  
25 the trial court may determine the amount of a reasonable fee by choosing an appropriate  
26 percentage of the fund created); *see also Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010)  
27 No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award of 1/3 of the Maximum  
28 Settlement Amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total

1 settlement was “well within the range of percentages which courts have upheld as reasonable in  
2 other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) No.  
3 08-cv-1501-IEG (BLM), 2010 WL 2196104, at \*8 (approving fee award of 33.33% of the  
4 common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007) No.  
5 1:05cv0484 DLB, 2007 WL 3492841, at \*4 (awarding fees of 1/3 of common fund in a wage  
6 and hour class action, noting: “[f]ee awards in class actions average around one-third of the  
7 recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C  
8 06-6883 VRW, 2008 WL 5478576, at \*8 (approving fees of 1/3 of common fund).

9       Once the Court grants preliminary approval of the Settlement Agreement and Class  
10 Notice is disseminated, Class Counsel will submit a comprehensive request for attorneys’ fees  
11 and costs with its final approval motion.

12       **I. THE CLASS REPRESENTATIVE’S SERVICE AWARD REQUEST IS FAIR AND**  
13       **APPROPRIATE**

14       The Settlement Agreement provides a Service Payment of \$10,000 to the Class  
15 Representative. The proposed Service Payment is reasonable given the time and effort she  
16 devoted to this case. Ms. Robertson’s efforts included providing factual background for the  
17 Class and PAGA complaint; providing documents and information about Defendants’ wage and  
18 hour policies; participating in phone calls to discuss litigation and settlement strategy; making  
19 herself available throughout the litigation to assist with analyzing the claims and defenses;  
20 helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The  
21 Class Representative also assumed significant risk in bringing this litigation—namely, had she  
22 lost, she could have been ordered to pay Defendants’ costs.

23       The requested Service Payment falls within the range of service payments typically  
24 awarded to class representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*  
25 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving  
26 \$11,250 service award to each of the two class representatives in a trucker meal break class  
27 action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,  
28 2010 WL 3833922, at \*2 (approving \$20,000 enhancement award to Class Representative in

1 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.  
2 Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from  
3 a \$1,400,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D.  
4 Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at \*28 (“the  
5 court finds Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS*  
6 *Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at \*52  
7 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage  
8 and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No.  
9 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at \*18 (approving “\$25,000 incentive award  
10 for each Class Representative” in wage an hour settlement).

11 **VI. APPOINTING THE SETTLEMENT ADMINISTRATOR**

12 Subject to the Court’s approval, the parties stipulated to CPT Group serving as the  
13 Settlement Administrator. CPT Group is experienced in administering class action settlements,  
14 and has provided an all-in bid of \$15,000 to administer the settlement. (Mankin Decl., ¶ 35).

15 **VII. PROCESS FOR GIVING NOTICE OF FINAL JUDGMENT**

16 The Court’s standard checklist inquires how notice of final judgment will be given to the  
17 Class. The Parties agree to include a paragraph in the Final Approval Order that directs the  
18 Settlement Administrator to give notice of entry of judgment at the same time the checks are  
19 mailed, as follows:

20 “Concurrently with mailing the settlement checks to the Class  
21 Members, the Settlement Administrator shall include a Notice of  
22 Entry of Judgment to all Class Members either on a postcard or as a  
23 detachable portion of the check for the Participating Class Members,  
24 noting the following: “Please be advised that on [date] the Superior  
25 Court of California for the County of Los Angeles entered Judgment  
26 in the case entitled *Robertson v. All Care Home Health Provider, et*  
27 *al.*, Case No. 20STCV18318, on behalf of all non-exempt employees  
28 of All Care Home Health Provider, All Care Home Health of San  
Gabriel, All Care Hospice, All Care Provider Services, Inc., and/or  
ComCare Home Health, Inc., (collectively, “All Care”) who worked  
in the State of California and performed nursing duties at any time  
between May 14, 2016 and May 24, 2021.”

**VIII. LWDA SUBMISSION AND SCHEDULING A FINAL APPROVAL HEARING**

Plaintiff has concurrently submitted the settlement and this motion to the LWDA in accordance with Labor Code § 2699(1)(2). (Mankin Decl., ¶ 36, Exhibit “E”).

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court’s approval, the Parties request that the Court schedule a hearing for final approval approximately 120 days after the Preliminary Approval is granted, in accordance with the following schedule:

|                                                                                 |                                                                                                                                                                 |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| August 30, 2021                                                                 | Preliminary Approval (PA) hearing                                                                                                                               |
| 25 calendar days after PA Order                                                 | Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Class Members.                                                      |
| 45 days after mailing Class Notice                                              | Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.                                                        |
| 16 court days before Final Approval hearing                                     | Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys’ fees, costs and service payments.      |
| 9 court days before Final Approval hearing                                      | Deadline for filing of any written opposition to Plaintiff’s Motion for Final Approval of Settlement, or filing any response to an objection to the settlement. |
| 5 court days before final approval hearing                                      | Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.                                                                 |
| Approximately January 5, 2022 (120+ days after Preliminary Approval is granted) | Final Approval Hearing.                                                                                                                                         |
| 15 days after Effective Date                                                    | Defendants to deliver court approved funds to Settlement Administrator                                                                                          |
| 10 days after receipt of funds                                                  | Settlement Administrator to issue checks.                                                                                                                       |

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1 **IX. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant her  
3 motion for preliminary approval of the settlement.

4 Dated: July 27, 2021

LAUBY, MANKIN & LAUBY LLP

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6 BY:

  
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7 Brian J. Mankin, Esq.  
8 Attorneys for Plaintiff and the Proposed  
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**SERVICE LIST**

Marissa Alguire, Esq.  
Corina Valderrama, Esq.  
Akerman LLP  
601 West Fifth Street, #300  
Los Angeles, CA 90071  
213-533-5980-Direct (Marissa)  
323-632-1032 Cell (Marissa)  
213-688-9500  
213-627-6342-fax  
marissa.alguire@akerman.com  
corina.valderrama@akerman.com  
Attorneys for Defendants